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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,504	10/24/2003	Christian Zander	7468 US	9278
36078	7590	01/27/2010		
MATTHEW D. RABDAU				
TEKTRONIX, INC.				
14150 S.W. KARL BRAUN DRIVE				
P.O. BOX 500 (50-LAW)				
BEAVERTON, OR 97077-0001				
EXAMINER				
SALOMON, PHENUEL S				
ART UNIT		PAPER NUMBER		
2179				
MAIL DATE		DELIVERY MODE		
01/27/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/692,504	Applicant(s) ZANDER, CHRISTIAN
Examiner PHENUEL S. SALOMON	Art Unit 2179

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Steven B Theriault/
Primary Examiner, Art Unit 2179

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are not persuasive in view of the cited art.

The arguments are not persuasive in view of the cited art.

As per claim 1, applicant argues that there is no disclosure in Matsui that the "message [or input] to be received., from the device under test., contains a variable wherein the protocol tester performs one of several activities as a function of the content of the variable."

In response, Examiner respectfully disagrees and notes that Matsui discloses test message input/output function unit that transmits/receives message to and from a facility under test (col. 5, lines 19-25). Furthermore, Matsui teaches in fig. 5 (item 410) a content of scenario/message with a plurality of scenario and message parameters which are considered as variables and (col 7, lines 54-58) discloses different scenarios for test such as an illegal test, fault test or the like.

As per claim 2, applicant argues the Matsui disclosure is missing the claimed "variable" as discussed above. Additionally, Matsui does not teach or suggest a specific "switch functionality" that is executed based on the "content of the variable" or any trigger.

In response, Examiner respectfully disagrees and notes that Matsui discloses test message input/output function unit that transmits/receives message to and from a facility under test (col. 5, lines 19-25). As for the switch functionality, (col 7, lines 54-58) discloses different scenarios for test such as an illegal test, fault test or the like where functionality will switch in reference to each one of these tests.

As per claim 3, applicant argues Gessel does not disclose "loop functionality" that is executed as a function of the content of the variable.

In response, Examiner respectfully disagrees and notes that Gessel loop 139 is part of the simulation process where the simulation is working in coordination with Loop 139 as far as message that needs to be distributed by this particular loop and different test sequences are shown in the first pan of the GUI of fig. 13.

As per claim 11, applicant argues that there is no disclosure in Matsui that the means for defining within the communication data graphically a message to be received at the protocol tester from the device under test which contains a variable wherein the protocol tester performs one of several activities as a function of the content of the variable.

In response, Examiner respectfully disagrees and refers applicant to the response to argument of claim 1 and in further view of the following Matsui discloses allowing a user to set analysis contents and items (col. 8, lines 19-23). Therefore, the user has to use a GUI to perform these tasks.